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PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

Translation

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference sac12PWO		Date of mailing (day/month/year)
FOR FURTHER ACTION See paragraph 2 below		
International application No. PCT/CH2004/000448	International filing date (day/month/year) 14.07.2004	Priority date (day/month/year) 28.07.2003
International Patent Classification (IPC) or both national classification and IPC		
Applicant SIG TECHNOLOGY LTD.		

1. This opinion contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion
<input checked="" type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

Form PCT/ISA/237 (cover sheet) (January 2004)

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Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II

Priority

1. ☒ The following document has not yet been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	1-10	YES
	Claims		NO
Inventive step (IS)	Claims	3, 5, 9	YES
	Claims	1, 2, 4, 6-8, 10	NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO
2. Citations and explanations:			
<p>1. The present report makes reference to the following documents:</p> <p>D1: JP 2001 171716 A (YOSHIDA INDUSTRY CO LTD) 26 June 2001 (2001-06-26)</p> <p>D2: WO 01/49583 A (KIM JONG KI) 12 July 2001 (2001-07-12)</p> <p>D3: US 6 045 004 A (J. Elliot) 4 April 2000 (2000-04-04)</p> <p>D4: EP 0860 370 A (L. Palm) 26 August 1998 (1998-08-26)</p>			
2. INDEPENDENT CLAIM 1			
<p>2.1. The present application does not satisfy the requirements of PCT Article 33(1) because the subject matter of claim 1 is not inventive within the meaning of PCT Article 33(3).</p> <p>Document D1 discloses (the references between parentheses apply to this document):</p> <p>a drinking and pouring closure with a piercing cutter mechanism for containers sealed with a foil material, consisting of a stopper (10) on which stopper (10) a</p>			

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citations and explanations supporting such statement

mouthpiece or pouring spout (30) is attached which, on the stopper inner side, forms a piercing cutter (13) that fits into said stopper (10) in the manner of a nipple, the lower edge of said piercing cutter forming at least one piercing tip (38) and at least one curved cutting edge (38) that extends from said tip at a diagonal incline to the nipple's axis of rotation, and said mouthpiece or pouring spout forming a sleeve (31) that surrounds the stopper (10) on the stopper outer side and being moveable on said stopper (10).

The subject matter of claim 1 thus differs from the known closure in that the stopper has either a radially protruding flange or a screw cap formed at its bottom.

Therefore, the subject matter of claim 1 is novel (PCT Article 33(2)).

The problem to be solved by the present invention can thus be seen as that of using the closure known from D1 on a bottle or on composite packaging.

The solution proposed in claim 1 of the present application cannot be considered inventive for the following reasons (PCT Article 33(3)):

Document D2 (as well as D3) describes the same advantages of a screw cap as the present application (see figure 1). A person skilled in the art would therefore consider the inclusion of this feature to be a routine design measure for solving the problem of interest.

A person skilled in the art would thus combine all of the

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features disclosed in D1 and D2 in order to solve the problem of interest without thereby being inventive. For this reason, the solution proposed in independent claim 1 cannot be considered inventive (PCT Article 33(3)).

3. DEPENDENT CLAIMS 2, 4, 6-8 and 10

Claims 2, 4, 6-8 and 10 do not contain any features which, in combination with the features of any claim to which they refer back, meet the PCT requirements for novelty and inventive step; see documents D1, D2 and D3 and the corresponding passages cited in the search report.

4. DEPENDENT CLAIMS 5, 3 and 9

The problem addressed by the invention disclosed in claim 5 can therefore be considered that of creating guiding means that result in a helical rotation of the pouring spout relative to the stopper when said pouring spout is pressed down onto said stopper.

Although document D4 discloses similar guiding means, which consist of at least one steep-angle groove that is guided helically along the outside of the stopper and of a sleeve on the associated pouring spout which is formed by at least two knobs that fit into said groove and are located on the inner side of the mouthpiece or pouring spout, a direct combination, specifically of the features known from D1 and D4, would not result in the solution proposed in claim 5.

Therefore, the solution according to claim 5 is considered inventive.

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Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
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Claims 3 and 9 contain the following features: a tear-away tamper-evident strip that is integrally formed on the pouring spout and attached via material webs. The problem addressed by these features can therefore be considered that of modifying the first opening/tamper-evident device known from D1 (including a strip integrally formed on the stopper) such that the overall height of the closure is minimized.

This solution is neither known from nor suggested by the available prior art.

4. Observation

The applicant is requested to carry out any amendments in accordance with PCT Rules 13.1 and 13.2.

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Box No. VI

Certain documents cited

1. Certain published documents (Rule 43bis.1 and 70.10)

Application No.
Patent No.

Publication date
(day/month/year)

Filing date
(day/month/year)

Priority date (valid claim)
(day/month/year)

2. Non-written disclosures (Rule 43bis.1 and 70.9)

Kind of non-written disclosure

Date of non-written disclosure
(day/month/year)

Date of written disclosure
referring to non-written disclosure
(day/month/year)

See Form 210